

OFFICES AND OFFICERS

CHAPTER 327

HOUSE BILL NO. 1461

(Representatives Pollert, K. Koppelman, Louser)
(Senators Burckhard, Klein, Wardner)

AN ACT to create and enact a new section to chapter 16.1-13 and section 44-02-03.1 of the North Dakota Century Code, relating to filling vacancies in offices of members of the legislative assembly; to amend and reenact sections 44-02-03 and 54-03-01.13 of the North Dakota Century Code, relating to filling vacancies in offices of members of the legislative assembly; and to repeal section 16.1-13-10 of the North Dakota Century Code, relating to vacancies in offices of members of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-13 of the North Dakota Century Code is created and enacted as follows:

Death or disqualification of legislative candidate.

If a candidate for an office of a member of the legislative assembly who has died or become disqualified for the office receives enough votes to be elected except for the death or disqualification, a vacancy in the office is deemed to exist, and must be filled according to section 44-02-03.1. If an individual elected to the legislative assembly dies or becomes disqualified after the election but before the individual's term of office begins, a vacancy in the office exists and must be filled according to section 44-02-03.1 as if the individual's term of office had begun. An individual is disqualified for an office if the individual fails to meet the qualifications under law for the office.

SECTION 2. AMENDMENT. Section 44-02-03 of the North Dakota Century Code is amended and reenacted as follows:

44-02-03. Vacancy in state or district office - How filled.

Any vacancy in a state or district office, except in the office of a member of the legislative assembly, must be filled by appointment by the governor. The governor may not fill a vacancy in the office of a member of the legislative assembly. A vacancy in the office of a supreme court justice or district court judge must be filled as provided in chapter 27-25. If during a vacancy in the office of governor, the lieutenant governor and the secretary of state are impeached, displaced, resign, or die, or from mental or physical disease or otherwise become incapable of performing the duties of the office of governor as provided by sections 2 and 7 of article V of the Constitution of North Dakota, then the succession to the office of governor is the speaker of the house, president pro tem of the senate, attorney general, in the order named. Each succeeding person named shall hold the office of governor until the vacancy is filled

by election or until any disability of the preceding person in the line of succession is removed.

SECTION 3. Section 44-02-03.1 of the North Dakota Century Code is created and enacted as follows:

44-02-03.1. Vacancy in legislative assembly.

1. If a vacancy in the office of a member of the legislative assembly occurs, the secretary of state shall notify the chairman of the legislative management of the vacancy. The secretary of state need not notify the chairman of the legislative management of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02.
2. Upon receiving notification of a vacancy, the chairman of the legislative management shall notify the district committee of the political party the former member represented, or the member-elect or deceased or disqualified candidate would have represented, in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member, member-elect, or deceased or disqualified candidate was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative management, the chairman of the legislative management shall appoint a resident of the district to fill the vacancy.
3. If a vacancy occurs because a member-elect died or became disqualified, or a candidate who died or became disqualified received a sufficient number of votes to be elected except for the death or disqualification, the term of an individual appointed to fill the vacancy begins on the first day of December of the year in which the vacancy occurs.
4. Except as provided in subsection 6:
 - a. If the office with the vacancy would not have been placed on the next general election ballot after the vacancy occurs had the member, member-elect, or candidate whose death, disqualification, or resignation created the vacancy been able and qualified to fulfill the term, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election that is at least ninety-four days after the vacancy occurs.
 - b. If the office with the vacancy would have been placed on the next general election ballot after the vacancy occurs had the member, member-elect, or candidate whose death, disqualification, or resignation created the vacancy been able and qualified to fulfill the term and:
 - (1) The next general election is scheduled to take place less than ninety-four days after the vacancy occurs:
 - (a) The individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election that is at least ninety-four days after the vacancy occurs; and

- (b) The elected successor shall serve through November thirtieth of the following even-numbered year.
- (2) The next general election is scheduled to take place at least ninety-four days after the vacancy occurs, the individual appointed shall serve until a successor is elected at and qualified following the next general election.
5. If a special election to fill the vacancy is called by the governor according to subsection 6, the individual elected at the special election shall serve for the remainder of the term of office which would have been served by the individual whose death, disqualification, or resignation created the vacancy.
 6. The qualified electors of a legislative district in which a vacancy in the office of a member of the legislative assembly occurs due to the death, disqualification, or resignation of a member of the legislative assembly during the member's term of office may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to at least four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 2. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving the notice, the governor shall issue a writ of election directed to the secretary of state commanding the secretary of state to hold a special election to fill the vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in title 16.1 and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.
 7. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative management according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.
 8. For purposes of addressing vacancies in offices of members of the legislative assembly, an individual is disqualified for an office if the individual fails to meet the qualifications under law for the office.

SECTION 4. AMENDMENT. Section 54-03-01.13 of the North Dakota Century Code is amended and reenacted as follows:

54-03-01.13. Staggering of terms of members of the legislative assembly.

1. A senator and two representatives must be elected from each even-numbered district in 2012 for a term of four years.

2. A senator and two representatives must be elected from each odd-numbered district in 2014 for a term of four years. However, a senator and two representatives from district seven must be elected in 2012 for a term of two years.
3. Except as provided in subsection 4, the term of office of a member of the legislative assembly elected in an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012.
4. A member of the legislative assembly who was elected from an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district may continue to serve the remainder of the term for which the member was elected beyond December 1, 2012, if the member changes the member's place of residence to a location in the odd-numbered district which is within the geographic area of the odd-numbered district from which the member was elected by March 15, 2012, and certifies in writing to the secretary of state and the chairman of the legislative management that the member has established a new residence in that district as determined by section 54-01-26. If the member does not establish residency within the district from which the member was elected by March 15, 2012, the term of office of that member terminates on December 1, 2012.
5. The term of office of a member of the legislative assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than twenty-five percent of the ideal district population terminates on December 1, 2012.
6. ~~Notwithstanding section 16.1-13-10, a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a two-year term of office.~~

SECTION 5. REPEAL. Section 16.1-13-10 of the North Dakota Century Code is repealed.

Approved March 31, 2021

Filed April 1, 2021

CHAPTER 328

HOUSE BILL NO. 1349

(Representatives Devlin, Karls)
(Senators Dwyer, Lee, Oban)

AN ACT to create and enact subsection 12 of section 44-04-19.1, a new section to chapter 44-04, and subsection 6 of section 50-24.8-12 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 9 of section 44-04-17.1, sections 44-04-18.27 and 44-04-19, subsections 1 and 2 of section 44-04-20, and section 44-04-30 of the North Dakota Century Code, relating to open record and meeting laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through any electronic means such as ~~telephone or videoconference~~, of:
 - (1) A quorum of the members of the governing body of a public entity regarding public business; or
 - (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of ~~such~~ the smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.
- b. "Meeting" does not include:
 - (1) A chance or social gathering at which public business is not considered;
 - (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group;
 - (3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong; ~~and~~
 - (4) Training seminars ~~whereat~~ which no other public business is considered or discussed; ~~and~~
 - (5) Administration of examinations by a regulatory board when no other public business is considered or discussed.

- c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 44-04-18.27 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

If a public entity or any person delegated authority by a public entity to review applications or make hiring decisions receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three or more of the qualified applicants as finalists for further consideration before the public entity or other person may issue an offer of employment to fill the position. However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after exempt.~~ Once the finalists are designated, the applications and related records of the finalists are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss ~~confidential exempt~~ applications. If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public. A public entity may adopt policies regarding the release of exempt records under this section.

SECTION 3. AMENDMENT. Section 44-04-19 of the North Dakota Century Code is amended and reenacted as follows:

44-04-19. Access to public meetings.

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 which does not regard public business is not required to be open under this section.

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the ~~person or persons seeking access or lack of electronic capacity to allow public viewing of the meeting through electronic means.~~
2. For purposes of this section, if the meeting is held in person, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting. If the meeting is held by electronic means, the electronic capacity must accommodate the number of persons reasonably expected to attend the meeting remotely.
3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audiotape or videotape and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided that there is no active interference with the conduct of the

meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.

4. ~~For meetings subject to this section when one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified, if the meeting is held through any electronic means, the information necessary to join or view the meeting electronically must be included in the notice issued under section 44-04-20.~~

SECTION 4. Subsection 12 of section 44-04-19.1 of the North Dakota Century Code is created and enacted as follows:

12. Unless subject to subsection 6 of section 44-04-18, active litigation records are exempt from section 44-04-18. For purposes of this subsection, "active litigation records" means records obtained, compiled, or prepared by a public entity or the attorney representing a public entity for the purpose of litigation unless the records already have been filed publicly or the litigation is completed.

SECTION 5. AMENDMENT. Subsections 1 and 2 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions, ~~conference call meetings, and videoconferences and~~ meetings held remotely. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
2. The notice required in this section must contain the date, time, and location of the meeting and, if practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice also ~~also~~ must contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by ~~telephone or videoconference, or other electronic means,~~ the location of the meeting ~~and the place the meeting is held is the location of a speakerphone or monitorelectronic address and any other information necessary to allow the public to join or view the electronic meeting as required under section 44-04-19.~~

SECTION 6. AMENDMENT. Section 44-04-30 of the North Dakota Century Code is amended and reenacted as follows:

44-04-30. Records of the state fire marshal, fire departments, and rural fire protection districts confidential.

1. a. An investigation record of the state fire marshal, a fire department, or a rural fire protection district is confidential until the investigation:
 - (1) Is closed and not referred for further criminal investigation or prosecution; or

(2) The criminal investigation is no longer active under section 44-04-18.7.

- b. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.
2. Standard operating procedures written for emergency response, prefire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the handpossession of the state fire marshal, a fire department, or rural fire protection district are exempt from section 44-04-18.
3. Individually identifiable health information obtained by the state fire marshal, a fire department, or a rural fire protection district is confidential.
4. An image of a victim of a fire is an exempt record.

SECTION 7. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Medical records or medical information - Exempt.

Unless otherwise provided by law, a medical record or a record containing medical information in the possession of a public entity is an exempt record.

SECTION 8. Subsection 6 of section 50-24.8-12 of the North Dakota Century Code is created and enacted as follows:

6. An active investigation record of the Medicaid fraud control unit is an exempt record unless the investigation is closed and not referred for further investigation or adjudication.

Approved April 19, 2021

Filed April 20, 2021

CHAPTER 329

SENATE BILL NO. 2276

(Senators Lee, Dwyer, Hogue)
(Representatives Nathe, Roers Jones)

AN ACT to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to confidentiality of law enforcement personnel records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Law enforcement work schedules - Confidential informants.

1. ~~Any~~Except as provided in subsection 5, a telephone number and the home address of a prosecutor, supreme court justice, district court judge, judicial referee, juvenile court director or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be disclosed to an inmate in the legal custody of the department of corrections and rehabilitation confined in a jail, prison, or other correctional facility unless authorized by the director of the department of corrections and rehabilitation. Information contained in a personnel record of a law enforcement officer of a state or local law enforcement agency or in the personnel record of a correctional employee of a correctional facility subject to chapter 12-44.1 may not be disclosed to an inmate confined in a state correctional facility or correctional facility subject to chapter 12-44.1 unless authorized by the employing agency.
2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. Any record containing the work schedule of employees of a law enforcement agency is exempt.
4. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

5. A home address of an individual in subsection 1 which is included in a geographic information system, a property title record, or tax parcel data is confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually.

Approved April 16, 2021

Filed April 16, 2021

CHAPTER 330

HOUSE BILL NO. 1335

(Representatives Kempenich, Bellew, Jones, Kading, M. Ruby, Simons)
(Senators O. Larsen, Myrdal)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to reservation of powers not granted to the federal government.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Reservation of powers not granted to the federal government.

Pursuant to the tenth amendment to the Constitution of the United States, public officials and employees in this state need not carry out or comply with an executive order of the president of the United States, a regulation of a federal agency or department, or a federal statute infringing on powers reserved to the several states.

Approved April 8, 2021

Filed April 9, 2021

CHAPTER 331

HOUSE BILL NO. 1344

(Representatives Kempenich, Hatlestad, Kreidt)

AN ACT to amend and reenact section 44-08-05.1 of the North Dakota Century Code, relating to the reporting by any public officer, employee, or any other individual who has knowledge of an actual or possible law violation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁴ **SECTION 1. AMENDMENT.** Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Payments - Purchasing card authority - Penalty.

1. Any public officer or employee who has the power to approve a payment for travel expenses or any other expenditure of public funds shall determine before approving the payment:
 - a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 - b. If for employee travel reimbursement, the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
 - c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.
2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments made with a purchasing card and make payments. The director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.
4. Any public officer or employee who fraudulently uses a purchasing card or knowingly approves a payment for false or unlawful claims or which does not otherwise meet the requirements of this section for approval may be subject to criminal prosecution under title 12.1. Any public officer or employee who,

²⁰⁴ Section 44-08-05.1 was also amended by section 1 of House Bill No. 1127, chapter 397.

without the use of ordinary care and diligence, uses a purchasing card or approves a payment for false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended.

5. Any public officer, employee, or any other individual who has knowledge of an actual or possible violation of this section shall make that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney ~~shall~~may investigate any alleged violation. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or a civil suit against the public officer or employee for the recovery of the funds as may actually have been improperly paid, or may initiate a prosecution and a civil suit.

Approved April 19, 2021

Filed April 20, 2021

CHAPTER 332

SENATE BILL NO. 2068

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

AN ACT to amend and reenact subsection 5 of section 44-11-02 of the North Dakota Century Code, relating to the obligations to prosecute the removal of an official.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 44-11-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Upon receipt of the recommendation of the attorney general, the governor shall determine whether to proceed with the appointment of a special commissioner. If the governor decides not to appoint a special commissioner, the governor shall notify the individuals who filed the petition and summarize the reasons for the decision. If the governor decides to appoint a special commissioner, the governor shall request that a prosecutor draft and serve the official complaint against the officer.
 - a. When the officer sought to be removed is other than the state's attorney, the state's attorney ~~or other competent attorney, upon request of the governor, for the county involved or in which the political subdivision or office is located, upon request of the governor,~~ shall appear and prosecute. Upon approval of the governor, the state's attorney may contract with a state's attorney from another county or other competent attorney, or request the attorney general to prosecute the proceedings.
 - b. When the proceedings are brought to remove the state's attorney, the ~~governor shall request the attorney general or other competent attorney~~ shall appear on behalf of the state and prosecute such proceedings. Upon approval of the governor, the attorney general may contract with a state's attorney or other competent attorney.

Approved April 12, 2021

Filed April 13, 2021